



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

82-3895
SPECIAL

June 11, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO:

LEGISLATIVE LIAISON OFFICER

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SUBJECT: Draft Justice, Education and OPM reports on S. 2127, the
Federal Advisory Committee Act Amendments of 1983"

The Office of Management and Budget requests the views of your
agency on the above subject before advising on its relationship
to the program of the President, in accordance with OMB Circular
A-19.

Please provide us with your views no later than COB Friday, June 15, 1984.
(NOTE: The hearing originally scheduled for 6/12/84 has been tentatively
rescheduled for 6/21 or 6/22/84.)

Direct your questions to Branden Blum (395-3802), the legislative
attorney in this office.


James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: R. Veeder
R. Landis
D. Sandahl

C. Wirtz
F. Reeder
M. Dost

N. Noonan
B. White
K. Wilson

M. Chaffee
D. Boyd

M. Uhlmann
F. Fielding

on 6/15/84
per phone call to Branden
Blum / OMB
has "no comment"
- we are exempt
per 54(b)(1)
of FACA
from the act
Rof
6/15/84

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Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable William V. Roth, Jr.
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This responds to your request for the Department of Justice's views on S. 2127, the "Federal Advisory Committee Act Amendments of 1983." These amendments would require greater justification and public accountability for the creation and continuation of advisory committees in order to "reduce the cost of the Federal advisory committee system and to assure that more advisory committee meetings are open to the public" 129 Cong. Rec. S. 16629 (Nov. 17, 1983). To achieve these and other goals, the bill would incorporate directly into the Federal Advisory Committee Act (FACA) much of the language and many of the requirements currently contained in the General Services Administration's (GSA's) interim rule on federal advisory committee management, see 48 Fed. Reg. 19324-31 (1983), which was promulgated to implement the existing provisions of FACA.

As set forth in greater detail in this letter, the Department of Justice has three concerns with the bill, which lead us generally not to support its enactment in its present form. First, we do not believe sufficient justification has been offered for incorporating into permanent statutory law all of the detailed restrictions already contained in the GSA regulations. Because of the specificity of many of these restrictions and the probable need for their continuing refinement and revision in light of future agency experience, it would be preferable, in our view, to maintain many of them simply as agency regulations. This would permit continuing administrative revision and development. Second, we believe that in incorporating the language of the GSA regulations

into FACA, the proposed amendments have left some ambiguity as to how different types of advisory committees are to be regulated. Among other things, we are unable to determine from the language of the amendments whether many of the proposed restrictions regulating agency-established advisory committees would also apply to independent Presidential advisory committees or so-called hybrid Presidential advisory committees, which are funded by an agency but advise both the President and an agency. Finally, we have additional concerns regarding the substantive restrictions in the Act on Presidential advisory committees.

I. Description of the Proposed Amendments

Like the GSA regulations, the proposed amendments would impose a variety of restrictions on the operation of advisory committees. Many of these limitations appear to be geared to reducing the cost of advisory committees. For example, the legislation would place additional limitations on the creation and continuation of committees, permitting their existence only when they provide information not otherwise available in the federal government and allowing termination when their cost exceeds their benefits. All committee members would be required to serve on a voluntary basis unless compensation were specifically required by law or necessary because certain expertise could not otherwise be obtained. In addition, there would be a limit on the salaries of staff members, and the hiring of consultants would be restricted.

There would also be more detailed procedures for the establishment and operation of the committees. Prior to creation of a new committee, the appropriate agency head would be required to prepare a letter of justification for the committee's existence as well as stipulations that the composition would be balanced "in terms of points of view represented and the functions to be performed." The bill also mandates in detail new monitoring responsibilities for heads of agencies.

In addition, the bill attempts to clarify the requirements applicable to subcommittees. The proposed legislation generally provides that an agency head is to follow the requirements applicable to establishing an advisory committee for any subcommittee which has functions or members different than the parent committee or which has responsibility to make recommendations directly to a federal official rather than for consideration by the parent committee.

II. Enactment of GSA Restrictions into Law

The proposed amendments raise somewhat unusual issues because, as we have said, most of their restrictions are already contained in the GSA regulations. While we recognize there may be special grounds favoring enactment of some of these provisions into permanent law, as a general matter we do not believe sufficient justification has been provided for enacting into permanent law most the detailed restrictions on advisory committees already adopted by GSA. To give only a few examples of the specificity of the amendments, they would prohibit compensation of any federal advisory committee member unless the agency head were otherwise unable to obtain "technical expertise" or "balance" on the committee. See proposed § 102. Compensation for staff members of committees would also be limited in certain circumstances. See id. In establishing an advisory committee, the agency head would be admonished to limit the size of the committee unless additional members were "necessary to the function of the committee or to achieve balanced membership"; to solicit annually the views of every advisory committee member on the activities of the committee; to review annually the level of staff support for every committee; and to monitor the attendance and participation of advisory committee members. See proposed § 103. Detailed procedures are also mandated for seeking GSA concurrence in the establishment of the committee, see proposed § 104; holding of committee meetings, see id.; and submitting annual reports to GSA on advisory committees. See proposed § 106.

In our view, most of these detailed regulations -- which in many cases simply implement broader requirements already in FACA -- should be left at this point to administrative specification, as currently provided in the GSA regulations, rather than to statutory enactment. Regardless of the merits of the proposal to limit agency costs by prohibiting payment of salaries to advisory committee members, for example, this type of limitation, if it is to be imposed, is most appropriately contained in agency regulations, where the exemption can be tailored over time to meet administrative needs. Similarly, the detailed procedures imposed on agency heads to monitor the activities of advisory committees, to submit reports on advisory committees, and to obtain the concurrence of GSA in the establishment of advisory committees, as a whole appear to be more properly the subject of administrative regulations, where changes can more easily be made when and if administrative burdens are found to outweigh the benefits to the public interest. Thus, unless there is some particularly strong reason why these restrictions should not simply be continued as administrative regulations, we can see no compelling basis at this point for enacting all of them into permanent law.

III. Application of the Amendments to Different Types of Advisory Committees

We are also somewhat confused by the application of the amendments to different types of advisory committees. As reflected in agency practice over the years, advisory committees can generally be categorized into three separate types: (1) an agency-established advisory committee, which ordinarily advises only the head of the agency and is supported administratively by the agency; (2) an independent Presidential advisory committee, which advises only the President and is funded by the Executive Office of the President; and (3) a so-called "hybrid" Presidential advisory committee, which advises the President but is administratively supported by an agency, to whom it also renders advice. Although never defined clearly, the drafters of the amendments apparently recognized at least two of these classifications, distinguishing between agency established and independent Presidential advisory committees in §§ 104 & 105.

Unfortunately, it is sometimes difficult to determine from the language of the amendments which of the various proposed restrictions would cover independent Presidential advisory committees -- which are discussed in the amendments at certain points but never defined -- or hybrid Presidential advisory committees, which are not specifically discussed. For example, since hybrid Presidential advisory committees are neither established by an agency nor "independent" in the sense of an independent Presidential advisory committee, it is unclear whether they are covered by the requirements in §§ 103 and 105 dealing with establishment of and meeting procedures for federal advisory committees. On the other hand, many of the detailed provisions on the operation of advisory committees in § 104 would technically appear to cover all committees, although references to the "agency head" in these provisions create some confusion. While we recognize that this ambiguity is also reflected in the GSA regulations, it is obviously important that the bill set forth with specificity the definition of the different types of advisory committees, and how they each are or are not to be regulated.

IV. Independent Presidential Advisory Committees

Apart from this lack of clarity, we also believe the President should have far greater latitude in administering independent Presidential advisory committees than appears to be contemplated under the bill. As we have said, the extent of the intended limitations on independent Presidential advisory committees are not entirely clear. Nevertheless,

the bill does specifically give the chairperson of an independent Presidential advisory committee broad powers over the committee's operation, including the rights: (1) to designate the committee management officer for the committee; (2) to determine the role of the designated federal official, who traditionally has supervised the activities of the advisory committee for the government; and (3) to file the committee charter. See proposed § 105. In addition, the Administrator of GSA, rather than an agency head or other person selected for this function by the President, would be vested with the authority to name the designated federal official for the committee and to approve requests to close advisory committee meetings. Id.

It has been our experience that the supervision and administration of Presidential advisory committees can raise delicate problems whose resolution is best left to the President when structuring the committee in the Executive order that establishes the committee. While on certain occasions the Administrator of GSA and the committee chairperson may be in the best position to assume the responsibilities that would be assigned to them under the amendments, the prominence of the participants in such committees may make another division of responsibility more appropriate in particular cases. For this reason, it is unwise, in our view, to require the President to allocate responsibility for independent Presidential advisory committees in this manner.

Finally, in response to your request that we discuss the paperwork impact of this bill on the Department, we also note that the requirement in proposed § 106 for quarterly reports on the membership of advisory committees appears to impose an excessive paperwork burden. The proposed rule does not specify what purpose this new requirement serves nor does it suggest that it will in some way reduce the existing reporting burden placed on federal agencies.

V. Technical Changes

There are several technical problems with the proposed bill that we bring to your attention:

1. P. 2, line 17
The word "committee" should be plural.
2. P. 3, line 14
The word "technical" should be inserted before expertise, to make it parallel with line 5.

3. P. 4, line 14
The word "with" should be inserted between "serve" and "the".
4. P. 6, line 17
The word "or" should be inserted between "improvements" and "corrective".
5. P. 8, line 8
The word "of" should replace the word "for".
6. P. 9, line 1
This section does not appear to follow the introduction on the prior page.
7. P. 9, line 3
The word "below" should be replaced by the word "above".
8. P. 10, line 7
The reference to section 101-6.1007(a)(1) and 2 is presumably unintentional, and should be deleted.
9. P. 10, line 21
This section does not appear to follow from the introductory clause.
10. P. 12, line 6-10
It is unclear what the difference between an advisory committee established "by law," and one established by "Congress", is.
11. P. 14, line 17
The sentence should be redrafted to say "with an advisory committee at any time before or after a meeting".

Explanation: It is not mandatory for a person to be in attendance at a meeting in order to file a written statement.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative and
Intergovernmental Affairs



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

The Honorable William V. Roth, Jr.
Chairman, Committee on Government Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for the opportunity to comment on S. 2127, a bill entitled the "Federal Advisory Committee Act Amendments of 1983".

The Department of Education recommends against enactment of S. 2127. Generally, this proposed bill would duplicate General Services Administration (GSA) Federal Advisory Committee Management Interim Rule, published April 28, 1983. We believe that the rulemaking process, which by its nature is more easily adapted to changing policies and to the individual objectives of a variety of agencies, is a more effective means of implementing the Federal Advisory Committee Act (FACA). Furthermore, the GSA Interim Rule is still under review and may be revised substantially before final publication. Our objections to specific provisions of S. 2127 are set out below.

Section 102 would amend Section 7(d) of FACA by adding new sections (3)(A) through (3)(D). We object strongly to section (3)(A) which would permit the compensation of committee members only in exceptional circumstances. Compensation of members should be the prerogative of the agency head who will make a decision on a case-by-case basis taking into consideration the importance of a committee, the magnitude of its functions, and the particular expertise of its members.

Sections 103, 104, 105, and 107 would amend FACA by incorporating portions of the GSA Interim Rule. We reiterate that these provisions are more appropriate to the rulemaking process than to the statutory process. We are particularly concerned about limiting the number of members serving on a committee. The number of members should be determined by a committee's objectives and structured responsibilities.

Page 2 - The Honorable William V. Roth

We are also concerned about section 105(d), although it is not clear whether this subsection would apply to all committee chairmen or only chairmen of independent Presidential committees. If the former, then we oppose the provisions of the proposed subsection, which pertain to the responsibilities of a committee chairman. Such chairmen are usually from the private sector and perform committee duties on an intermittent basis. The duties specified in this subsection are best handled by a full-time Federal employee and would constitute an unnecessary burden on chairmen.

Section 106 would amend FACA to require updated quarterly membership lists for GSA. This requirement would create a duplicative and unnecessary paperwork burden on each agency. Moreover, the information could be outdated within days of being provided to GSA due to turnover in membership. This Department maintains membership lists on a current basis and responds quickly to inquiries about membership which, in our experience, tend to be specific to one committee and not generalized to the entire membership of all of an agency's committees.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress.

Sincerely,

T. H. Bell



United States
Office of
Personnel Management

DRAFT

Washington, D.C. 20415

In Reply Refer To

Your Reference

Honorable William V. Roth, Jr., Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This replies to your request for the Office of Personnel Management's views on S. 2127, the "Federal Advisory Committee Act Amendments of 1983".

The bill changes existing law by prohibiting pay for Advisory Committee members unless an agency head is otherwise unable to obtain needed expertise. We support the idea of unpaid service.

Section 102 amends section 7(d) of the law by adding a paragraph (3)(A) to require committee members to serve without pay and states an agency head "may contract for the services of a specific consultant who may be appointed as a member of the advisory committee" (underlining added). This provision obscures an important distinction between procurement services (contracting) and Federal appointment, two types of service which rest on different bodies of law. To remove the ambiguity, and to provide for the closer control over consulting services that the appointment system affords, we recommend elimination of the confusing reference to "contract" and directing agencies to use section 3109 of title 5 as the appropriate personnel statute for appointing a consultant as an employee. Accordingly, we suggest the following changes on page 3:

1. Expand the title of paragraph (3)(A) to, "Committee Members and Consultants."
2. Delete the remainder of line 7 starting with "the agency head may contract . . ." to the end of line 21 and substitute:

" . . . the agency head may appoint and pay a consultant under the provisions of section 3109 of title 5, United States Code, as a member of an advisory committee. The employment of consultants shall be in accordance with applicable statutes, regulation, Executive orders, and any Government-wide administrative controls."

For consistency with the pay revisions proposed in section 102 of the bill, section 7(d)(1)(A) of the Act which reflects the current pay limits should be repealed.

-2-

Finally, we invite your attention to two minor technical errors in the bill: the lead sentence of proposed subsection 7(d)(3)(C) refers to the "General Management Schedule." There is no such schedule; there is a GM designation for Merit Pay employees. This reference should be changed to the "Merit Pay System"; also "General Management Schedule" should be deleted from the following sentence for the same reason.

The Office of Management and Budget has advised that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

Donald J. Devine
Director

file 42, 8
II

98TH CONGRESS
1ST SESSION

S. 2127

Entitled the "Federal Advisory Committee Act Amendments of 1983".

no impact
on CIA
- does not
remove or
affect CIA's
§ 4(b)(2)
exemption
from FACA

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17 (legislative day, NOVEMBER 14), 1983

Mr. NICKLES introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

Entitled the "Federal Advisory Committee Act Amendments of 1983".

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Federal Ad-
5 visory Committee Act Amendments of 1983".

6 ADDITIONAL POLICY CONSIDERATIONS

7 SEC. 101. Section 2(b) of the Federal Advisory Commit-
8 tee Act, as amended (5.U.S.C. App. 2), is amended as
9 follows:

10 (a) In subsection (2) after the word "necessary" strike
11 ";" and insert in lieu thereof ", and only when the informa-

1 tion to be obtained is not already available through another
2 advisory committee or source within the Federal
3 Government;”.

4 (b) In subsection (3) after the word “established” strike
5 “;” and insert in lieu thereof “, and when the subject matter
6 or work of the committee has become obsolete by the passing
7 of time or the assumption of the committee’s main functions
8 by another entity within the Federal Government; or the
9 agency determines that the cost of operation is excessive in
10 relation to the benefits accruing to the Federal
11 Government.”.

12 (c) In subsection (4) after the word “committees” strike
13 “;” and insert in lieu thereof “and that composition of such
14 committees should be balanced in their memberships in terms
15 of the points of views represented and the functions to be
16 performed;”.

17 (d) In subsection (5) after the word “committee” strike
18 “; and” and insert in lieu thereof “and the meetings of such
19 committees must be open to the public except in those cir-
20 cumstances where a closed meeting shall be deemed proper
21 and consistent with the Act; and”.

22 **ADDITIONAL COMPENSATION LIMITATIONS**

23 SEC. 102. Section 7(d) of the Federal Advisory Com-
24 mittee Act, as amended (5 U.S.C. App. 2) is amended by
25 adding at the end thereof the following:

1 “(3)(A) COMMITTEE MEMBERS.—Unless specifically
2 required by law, agencies shall not compensate advisory com-
3 mittee members for their service on an advisory committee.
4 In the exceptional case where an agency head is unable to
5 meet the need for technical expertise or the requirement for
6 balanced membership solely through the appointment of non-
7 compensated members, the agency head may contract for the
8 services of a specific consultant who may be appointed as a
9 member of the advisory committee. In such a case, the
10 agency head shall follow the procedures set forth in para-
11 graph (B) of this section.

12 “(B) CONSULTANTS.—Prior to hiring a consultant who
13 shall be appointed as a member to an advisory committee,
14 the agency head must determine that the expertise or view-
15 point to be offered by the consultant is not otherwise availa-
16 ble without cost to the agency. When an agency head hires a
17 consultant, the compensation may not exceed the maximum
18 rate of pay authorized by section 3109 of title 5, United
19 States Code. Hiring of consultants shall be in accordance
20 with applicable statutes, regulations, Executive orders, and
21 any Government-wide administrative controls.

22 “(C) STAFF MEMBERS.—An agency may fix the pay of
23 each advisory committee staff member at a rate of the Gener-
24 al Schedule, General Management Schedule, or Senior Ex-
25 ecutive Service in which the staff member’s position would

1 appropriately be placed (5 U.S.C. chapter 51). An agency
2 may not fix the pay of a staff member at a rate higher than
3 the daily equivalent of the maximum rate for GS-15, unless
4 the agency head has determined that under the General
5 Schedule, General Management Schedule, or Senior Execu-
6 tive Service classification system, the staff member's position
7 would appropriately be placed at a grade higher than GS-15.
8 This determination must be reviewed annually by the agency
9 head—

10 “(i) in establishing rates of compensation, the
11 agency head shall comply with applicable statutes, reg-
12 ulations, and Executive orders; and

13 “(ii) A staff member who is a Federal employee
14 shall serve the knowledge of the designated Federal of-
15 ficial and the approval of the employee's direct supervi-
16 sor. If a non-Federal employee, the staff member shall
17 be appointed in accordance with applicable agency pro-
18 cedures, following consultation with the advisory
19 committee.

20 “(D) NONCOMPENSATED SERVICES.—Nothing in this
21 section prevents an agency from accepting the noncompen-
22 sated or unreimbursed services of a consultant or staff
23 member of an advisory committee.”.

1 ADDITIONAL RESPONSIBILITIES OF AGENCY HEADS AND

2 ADVISORY COMMITTEE MANAGEMENT OFFICERS

3 SEC. 103. Section 8 of the Federal Advisory Committee
4 Act, as amended (5 U.S.C. App. 1) is amended as follows:

5 (a) At the end of paragraph (a) add—

6 “(1) The agency head shall—

7 “(A) file charter as specified in section 9;

8 “(B) issue agency regulations or guidelines
9 as may be necessary to operate and oversee the
10 advisory committee;

11 “(C) file required documents;

12 “(D) publish required notices in the Federal
13 Register;

14 “(E) designate a Committee Management Of-
15 ficer for the agency;

16 “(F) appoint a Designated Federal Official
17 for each advisory committee;

18 “(G) ensure the opportunity for public par-
19 ticipation as required;

20 “(H) ensure that detailed minutes are kept of
21 each advisory committee meeting;

22 “(I) ensure that any rates of pay are
23 justified;

24 “(J) submit required reports; and

1 “(K) terminate the advisory committee when
2 appropriate.

3 “(2) The agency head should—

4 “(A) not later than the initial meeting of an
5 advisory committee, submit to committee mem-
6 bers, committee staff, consultants, and appropriate
7 agency management personnel a written state-
8 ment of the purpose, objectives, and expected ac-
9 complishments for the committee;

10 “(B) solicit in writing or in a formal meeting
11 at least annually the views of the committee
12 members on the effectiveness, activities, and man-
13 agement of the committee, including recommenda-
14 tions for improvement. Comments received should
15 be reviewed by the agency head or senior policy
16 official responsible for the committee to determine
17 whether improvements corrective action is war-
18 ranted. Copies of such recommendations should be
19 retained until the committee is terminated or
20 renewed;

21 “(C) inform key management personnel of
22 the agency whose interests are affected by the
23 committee of committee meetings, provide them
24 with copies of committee or subcommittee reports,
25 and allow them to assist the designated Federal

1 official or employee in the establishment of the
2 agenda;

3 “(D) limit membership on advisory commit-
4 tees to twenty-five members for committees with
5 an agencywide mission and twelve members for
6 committees with a more narrowly defined function
7 or specialized area of interest. An agency head
8 may authorize additional members for a commit-
9 tee when the agency head determines that such
10 additional members are necessary to the function
11 of the committee or to achieve balanced
12 membership;

13 “(E) periodically, but not less than annually,
14 review the level of agency staff support dedicated
15 to advisory committees to ensure that expendi-
16 tures are justified in consideration of committee
17 activity and the benefits accruing to the
18 Government;

19 “(F) monitor the attendance and participation
20 of advisory committee members and consider re-
21 placing any member who has missed a substantial
22 number of scheduled committee meetings; and

23 “(G) establish meeting dates and distribute
24 agendas and other meeting materials well in
25 advance.”.

1 (b) In paragraph (b) strike the words “The head of each
2 agency which has an advisory committee shall designate an
3 Advisory Committee Management Officer who shall—” and
4 insert in lieu thereof “The Committee Management Officer
5 for the agency shall—”and at the end of paragraph (b), sub-
6 section (3) add the following new subsection:

7 “(4) maintain in a single location a complete set
8 for the charters and membership lists of each of the
9 agency’s advisory committees;

10 “(5) maintain information on the nature, functions,
11 and operations of the agency’s advisory committees;
12 and

13 “(6) provide information on how to obtain copies
14 of minutes of meetings and reports of each of the agen-
15 cy’s advisory committees.”.

16 FURTHER ESTABLISHMENT AND PUBLICATION

17 REQUIREMENTS

18 SEC. 104. Section 9 of the Federal Advisory Committee
19 Act as amended (5 U.S.C. App. 1) is amended as follows:

20 “(a) At the end of paragraph (c) add the following new
21 paragraph:

22 “(d) Advisory committees may only be established in ac-
23 cordance with the following procedures:

1 “(1) prepare a proposed charter for the committee
2 which includes the information listed in paragraph (C)
3 below; and

4 “(2) submit an original and one copy of a letter to
5 the Administrator proposing to establish or use, rees-
6 tablish, or renew, an advisory committee. The letter
7 shall include the following information:

8 “(A) an explanation of why the committee is
9 essential to the conduct of agency business and in
10 the public interest;

11 “(B) an explanation of why the committee’s
12 functions cannot be performed by the agency, an-
13 other existing advisory committee, or other means
14 such as a public hearing; and

15 “(C) a description of the agency’s plan to
16 attain balanced membership. For purposes of ob-
17 taining balance, agencies shall consider for mem-
18 bership a cross-section of interested persons and
19 groups with demonstrated professional or personal
20 qualifications or experience to contribute to the
21 functions and tasks to be performed. This shall
22 not be construed to limit the participation of any
23 individual where such participation is necessary to
24 obtain divergent points of view that are relevant
25 to the business of the advisory committee. The

1 letter shall be accompanied by two copies of the
2 proposed charter.

3 “(3)(A) CONSULTATION AND CHARTERING.—
4 Unless a particular subcommittee(s) is specifically pro-
5 vided for and described in the charter of the parent ad-
6 visory committee, the requirements of section 101-
7 6.1007(a) (1), (2) shall apply to any subcommittee
8 which—

9 “(1) has functions other than, or different
10 from, the parent committee;

11 “(2) has functions independent of the parent
12 committee, for example, making recommendations
13 directly to a Federal official rather than to and for
14 consideration by the parent committee; or

15 “(3) has members other than members of the
16 parent committee.

17 “(B) SUBCOMMITTEE MEETINGS.—A meeting of
18 a subcommittee shall be subject to the provisions of the
19 Act to the same extent as a meeting of a parent
20 committee:

21 “(1) the Administrator will review the pro-
22 posal and provide the agency head with concur-
23 rence, nonconcurrence, or status report;

1 “(2) upon receipt of the Administrator’s final
2 determination, the agency head shall notify the
3 Administrator in writing that either—

4 “(A) the advisory committee is being
5 established; the filing of the advisory com-
6 mittee charter as specified in paragraph (e)
7 below shall be considered appropriate written
8 notification in this instance. The agency head
9 shall then comply with the provisions of
10 paragraph (a) in section 8 of the Act for an
11 established advisory committee; or

12 “(B) the advisory committee is not
13 being established. In this instance, the
14 agency head shall also advise the Adminis-
15 trator if the agency head intends to take any
16 further action with respect to the proposed
17 advisory committee.

18 “(e) Charter filing requirements are as follows:

19 “(1) ADVISORY COMMITTEE ESTABLISHED,
20 USED, REESTABLISHED, OR RENEWED BY AN
21 AGENCY.—The agency head shall file—

22 “(A) the charter with the standing commit-
23 tees of the Senate and of the House of Repre-
24 sentatives having legislative jurisdiction of the
25 agency;

1 “(B) a copy with the Secretariat; and

2 “(C) a copy with the Library of Congress,
3 Exchange and Gift Division, Federal Documents
4 Section, Federal Advisory Committee desk,
5 Washington, District of Columbia 20540.

6 “(2) ADVISORY COMMITTEE SPECIFICALLY DI-
7 RECTED BY LAW OR AUTHORIZED BY LAW.—Proce-
8 dures are the same as in paragraph (1) of this section.

9 “(3) PRESIDENTIAL ADVISORY COMMITTEE.—
10 When either the President or the Congress establishes
11 an advisory committee which advises the President, the
12 responsible agency head or, in the case of an inde-
13 pendent Presidential advisory committee, the Presi-
14 dent’s designee shall file—

15 “(A) the charter with the Secretariat;

16 “(B) a copy with the Library of Congress;
17 and

18 “(C) if specifically directed by law, a copy
19 with the standing committees of the Senate and
20 the House of Representatives having legislative
21 jurisdiction of the agency or of the independent
22 Presidential advisory committee.

23 “(f) The following information must be published:

24 “(1)(A) COMMITTEE ESTABLISHMENT, REESTAB-
25 LISHMENT, OR RENEWAL.—A notice in the Federal

1 Register is required when any advisory committee,
2 except a committee directed by law or established by
3 the President, is established, reestablished, or renewed.
4 Upon receiving notification of the completed review
5 and concurrence in the committee from the Administra-
6 tor, the agency head shall publish a notice in the Fed-
7 eral Register that the committee is being established,
8 reestablished, or renewed, and for a new committee
9 such notice shall also include a statement describing
10 the nature and purpose of the committee and an affir-
11 mation that it is necessary and in the public interest.

12 “(B) Establishment and reestablishment notices
13 shall appear before the committee charter is filed.

14 “(2) COMMITTEE MEETINGS.—(A) The agency
15 head or the chairperson of an independent Presidential
16 advisory committee shall publish prior to an advisory
17 committee meeting a notice in the Federal Register
18 which includes—

19 “(i) the exact name of the advisory commit-
20 tee as chartered;

21 “(ii) the time, date, place, and purpose of the
22 meeting;

23 “(iii) a summary of the agenda; and

24 “(iv) a statement whether all or part of the
25 meeting is open to the public or closed, and if

1 closed, the reasons why, citing the specific ex-
2 emptions of section 552b of title 5, United States
3 Code, as the basis for closure.”.

4 ADDITIONAL COMMITTEE PROCEDURES AND FEDERAL
5 OFFICIAL'S DUTIES

6 SEC. 105. Section 10 of the Federal Advisory Commit-
7 tee Act is amended (5 U.S.C. App. 1) is amended as follows:

8 (a) At the end of paragraph (a) subsection (3) add the
9 following: “The agency head, or the chairperson of an inde-
10 pendent Presidential advisory committee, shall ensure that—

11 “(A) each advisory committee meeting is held at a
12 reasonable time and in a place reasonably accessible to
13 the public;

14 “(B) the meeting room size is sufficient to accom-
15 modate advisory committee members, committee or
16 agency staff, and interested members of the public;

17 “(C) any member of the public is permitted to file
18 a written statement with the advisory committee; and

19 “(D) any member of the public may speak at the
20 advisory committee meeting if the agency's regulations
21 or guidelines so permit.”.

22 (b) In paragraph (d) after the second time the word “de-
23 termination” appears, insert the following: “The procedure
24 which must be followed to close an advisory committee meet-
25 ing is—

1 “(1) to close all or part of a meeting, a duly au-
2 thorized official acting on behalf of the committee shall
3 submit a request to the agency head, or in the case of
4 an independent Presidential advisory committee, the
5 Administrator or his delegate, citing the specific provi-
6 sions of section 552b of title 5, United States Code,
7 which justify the closure. The request shall provide the
8 agency head (or Administrator) sufficient time to make
9 a determination prior to publication of the required
10 meeting notice;

11 “(2) if the agency head, or in the case of an inde-
12 pendent Presidential advisory committee, the Adminis-
13 trator or the person to whom such authority is delegat-
14 ed by the agency head or Administrator, determines
15 that the request is consistent with applicable law, he or
16 she shall issue a determination that all or part of the
17 meeting may be closed; and

18 “(3) the agency head, or the chairperson of an in-
19 dependent Presidential advisory committee, shall—

20 “(A) make a copy of the determination avail-
21 able to the public upon request; and

22 “(B) publish the meeting notice in the Feder-
23 al Register, including the reasons why all or part
24 of the meeting is closed, citing the specified ex-

1 emptions used from the Government in the Sun-
2 shine Act.”.

3 (c) Strike all of paragraph (e) and insert in lieu thereof
4 the following:

5 “(e) The agency head, or in the case of an independent
6 Presidential advisory committee, the Administrator, shall
7 designate a full-time Federal employee to be the designated
8 Federal official for the advisory committee who—

9 “(1) must attend the meetings;

10 “(2) shall adjourn the meetings when he or she
11 determines that adjournment is in the public interest;
12 and

13 “(3) for agency-established advisory committees—

14 “(A) approve or call the meeting of the advi-
15 sory committee;

16 “(B) approve the agenda; and

17 “(C) chair the meeting when so determined
18 by the agency head; and

19 “(4) no advisory committee shall conduct any
20 meeting in the absence of the designated Federal
21 official.”.

22 (d) At the end of paragraph (f) add the following new
23 paragraph:

24 “(g) The chairperson shall comply with the Act and this
25 regulation shall—

1 “(1) determine with the Administrator or his or
2 her delegate the role of the designated Federal official;

3 “(2) designate a committee management officer
4 for the committee; and

5 “(3) fulfill the responsibilities of an agency head
6 as specified in paragraph (a)(1) subsections (A), (C),
7 (D), (G), (H), and (J) of section 8 of this Act.”.

8 ADDITIONAL REPORTS

9 SEC. 106. At the end of section 12 of the Federal Advi-
10 sory Committee Act as amended (5 U.S.C. App. 1) add the
11 following new paragraph:

12 “(c) The Administrator or designee shall periodically
13 issue instructions to agencies regarding reporting require-
14 ments and procedures. Included in those instructions shall be
15 a requirement that each agency file a report on a fiscal year
16 basis providing requested program, financial, and membership
17 information to the Secretariat for preparing program recom-
18 mendations and status reports on advisory committee mat-
19 ters, and for assisting the President in preparing and submit-
20 ting a fiscal year report to the Congress. The membership list
21 for each advisory committee shall be updated quarterly with
22 notification furnished to GSA of all new vacancies and ap-
23 pointments during the period.”.

1 ADDITIONAL TERMINATION AND RENEWAL PROCEDURES

2 SEC. 107. Section 14 of the Federal Advisory Commit-
3 tee Act as amended (5 U.S.C. App. 1) is amended as follows:

4 (a) In paragraph (a) at the end of subsection (2)(B) strike
5 the “.” and insert in lieu thereof the following: “; or (c) the
6 President or agency head terminates it before that time.”.

7 (b) At the end of paragraph (c) add the following new
8 paragraph:

9 “(d)(1) Advisory committees established by the Presi-
10 dent may be renewed by appropriate action of the President
11 and the filing of a new charter.

12 “(2) Advisory committees specifically directed by law—

13 “(A) which terminate under the provisions of sec-
14 tion 14 of the Act may be reestablished by an agency
15 head, provided that the agency complies with the pro-
16 visions of paragraph (a)(3) in section 9 of this Act.

17 “(B) whose duration extends beyond two years
18 shall require a new charter to be filed every two years
19 after the date of enactment of the law establishing the
20 committee. If a new charter is not filed, the committee
21 is not terminated, but may not meet or take any
22 action.

23 “(3) Advisory committees authorized by law or estab-
24 lished or used by an agency: At least thirty but not more
25 than sixty days before the committee terminates, an agency

19

- 1 head who intends to renew a committee shall comply with
- 2 the provisions of paragraph (a)(3) in section 9 of this Act.”.

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